



Mark M. Friedman  
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In re Application of	:	
SHKLARSKY, et al.	:	DECISION ON
Application No.: 09/202,617	:	
PCT No.: PCT/IL97/00188	:	PETITION UNDER
Int. Filing Date: 10 June 1997	:	
Priority Date: 18 June 1996	:	37 CFR 1.181
Attorney Docket No.: 26/259	:	
For: ADAPTIVE CAPACITY AND QUALITY	:	
IMPROVEMENTS IN CELLULAR RADIO	:	
SERVICES BY THE REMOVAL OF STRONG	:	
INTERFERENCE SOURCES	:	

This is a decision on applicants' "Petition to Withdraw Holding of Abandonment", filed on 31 August 2000. The petition is being treated as a petition under 37 CFR 1.181.

### **BACKGROUND**

On 10 June 1997, applicant filed international application PCT/IL97/00188, which claimed priority of an earlier application filed 18 June 1996. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 24 December 1997. A Demand for international preliminary examination, in which the United States was elected, was filed on 02 December 1997, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 18 December 1998.

On 18 December 1998, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1) and a copy of the International Search Report. An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not included.

On 23 February 1999, applicant was mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) advising applicant that an oath or declaration of the inventors was missing from the application. The notification set a ONE (1) MONTH period for response.

On 09 December 1999, applicant was mailed a Notification of Abandonment for having failed to respond to the Notification of Missing Requirements (Form PCT/DO/EO/905).

On 31 August 2000, applicant filed the present petition requesting withdrawal of the holding of abandonment.

### **DISCUSSION**

The Official Gazette, at 1156 OG 53, provides that a petition requesting relief based on the grounds that an Office action was not received must be accompanied by a statement that (1) the Office action was not received, (2) attests that a search of the file jacket indicates the Office action was not received, (3) attests that a search of counsel's docket records indicates the Office action was not received and (4) the Petition must also be accompanied by copies of the docket records where the non-received Office action would have been entered. (See also, Delgar v. Schulyer, 172 USPQ 513 (D.D.C. 1971).

Applicants' petition and accompanying papers filed 31 August 2000 satisfy items (1) and (3) above.

As to item (2), while counsel has included a copy of all the entries on his computer database concerning this application, the Declaration of Mark Friedman does not clearly state that a search of the **file wrapper** and docket records indicate that the Notification mailed 23 February 1999 was not received. In this regard, the statement, "This indicates that I have never received a Notice of Missing Requirements on the above identified application" falls short of the statement required to satisfy item (2) above.

Regarding item (4), applicant has not submitted a proper docket record. The "mail log" sent by Mr. Castorina is not sufficient. In addition, Mr. Friedman only sent the log for this case, not all cases. In order to satisfy item (4) above, the submitted docket record must show all responses due on 23 March 1999.

Thus, applicants have not provided the proper showing necessary to withdraw the holding of abandonment and the petition may not be properly granted.

### **CONCLUSION**

The Petition to Withdraw Holding of Abandonment under 37 CFR 1.181 has been considered, however, for the reasons indicated above, the petition stands **DISMISSED** without prejudice and the application remains **ABANDONED**.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.181." No additional fee is required.

Any renewed petition filed must include a proper reply. A proper reply must include

a statement that a search of the file jacket indicates the Notification of Missing Requirements mailed 23 February 1999 was not received.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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